Willink v. *Vanderveer,* 1 Barb. 599, contra. Of course if the option is acquired for the express purpose of making a sale to the principal the result is different. *Hindle* v. *Holcomb,* 34 Wash. 336. Possibly those cases which deny a recovery by the principal, and thus practically force him to return the property, go too far. But it would seem, on principle, that cases like the principal one, which compel the principal to pay only the amount paid by the agent, are not sound, in that they overlook the fact that the agent may have made a good bargain. He should not be deprived of his property at less than its value simply because it is an option rather than the fee. In short, if a recovery is to be allowed at all, which seems doubtful on authority, it should be the difference between the amount charged the principal and the actual value, and not the difference between the amount charged and the amount paid under the option.

QUIETING TITLE—RESTRICTIVE COVENANTS—CLOUD ON TITLE.—Pending a sale of a parcel of land from one church to another, a third party took title to the premises in his own name, until consent of diocesan authorities should be obtained. Plaintiff church had possession of the property, and had the right to purchase from the third party. The deed from defendant church to the third party contained a covenant that the premises should never be occupied for any other than church purposes. It was expressly stated that the covenant should attach to and run with the land. The deed from the third party to plaintiff church contained a similar restriction, and deed was accepted by plaintiff. Plaintiff desired to borrow money upon the land in question; but because of the above covenant standing as an apparent burden on the title, destroying its market value because of the restricted use, the loan could not be negotiated. Plaintiff sought to be relieved from the obligation of the covenant on the ground that it is a cloud upon the title. *Held,* the restrictive covenant in the deed casts a cloud upon the plaintiff's title, and plaintiff is entitled to judgment removing the cloud. *Rector, etc., of St. Stephen's Protestant Episcopal Church* v. *Rector, etc., of Church of the Transfiguration* (1911), — N. Y. —, 94 N. E. 191.

The decision was rendered by a divided court, four to three, and CULLEN, C. J., the fourth of the majority, concurred in the result only. GRAY, J., rendered a vigorous dissenting opinion, concurred in by HISCOCK and COLLIN, JJ., in which he denies that plaintiff is entitled to equitable relief. The term "cloud" is not clearly defined in meaning. *Ward* v. *Dewey,* 16 N. Y. 519; *Apperson* v. *Ford, 23* Ark. 746. In general, a cloud on one's title is something which constitutes an apparent encumbrance upon it, or an apparent defect in it. In *Waterbury Savings Bank* v. *Lawler,* 46 Conn. 243, the court says, "A cloud upon one's title is something which shows prima facia some right of a third person to it." A cloud is a semblance of a title, either legal or equitable, or a claim of an interest in lands appearing in some legal form. *Rigdon* v. *Shirk,* 127 Ill. 411, 19 N. E. 698; *Shults* v. *Shults,* 159 Ill. 654, 43 N. E. 800, 50 Am. St. Rep. 188. Justice GRAY, in his dissenting opinion in the principal case, maintains that a covenant in plaintiff's deed is not a cloud on the title. In the light of the authorities above cited, the position of Justice GRAY ap-

pears very tenable. There was no adverse claim to the property, and the possible invalidity of the restrictive covenant would have no effect in determining whether it was a cloud on the title. POMEROY, EQUITABLE REMEDIES, § 727 (note), enumerates many of the instruments and proceedings which have been removed as clouds on title, but he nowhere mentions a covenant in a deed as a cloud on the title thereby conveyed. He says, "Instruments and proceedings of every conceivable nature have been removed as clouds on title" but does not include covenants of the granting instrument itself. In *Parker* v. *Shannon,* 121 Ill. 452, 13 N. E. 155, the court says, "Such clouds on title as may be removed by courts of equity are instruments or other proceedings in writing which appear upon the records, and thereby cast doubt upon the validity of the record title." In the principal case, the covenant in the deed could in no way be said to cast any doubt upon the validity of the record title. The plaintiff claims that the covenant is invalid and unenforcible, and requests that the court of equity remove it. But if it is not a cloud on the title, as the above cases seem to indicate, there seems to be no basis for the equitable jurisdiction of the case. Justice GRAY says in the dissenting opinion, "As an appeal to the equity powers of the court, it is necessary that the case shall fall under some recognized head of equity jurisdiction. I know of no branch of that jurisdiction which would comprehend such an action as this. * * * When a person brings an equitable action, he must maintain it upon some equitable ground." These words of Justice GRAY seem to represent the truth of the matter, as contained in the authorities, better than does the prevailing opinion. The majority maintain that equitable jurisdiction can be properly invoked by a party to cancel a covenant in his grant; but they cite no precedent or authority to substantiate the statement.

REMANDING OF CAUSES—MANDAMUS TO COMPEL.—One Harding, a citizen of the state of Illinois, commenced an action against several corporations, alleged to have been created by and citizens of the State of New Jersey, in an Illinois state court. Upon the application of the Corn Products Company, one of the defendant corporations, the case was removed to the United States Circuit Court, whereupon a motion was filed by the petitioner to have the case remanded, which motion was overruled. 182 Fed. 421. Application was then made to the Supreme Court of the United States for a writ of mandamus to compel the Circuit Court of the United States for the Northern District of Illinois to remand the cause to the state court. *Held,* that the writ of mandamus should not issue. *Ex parte Harding* (1910), 31 Sup. Ct. 324.

In order to justify the removal of a cause from the state to the federal court it must appear that the case might originally have been brought in the federal court. When the parties are citizens of different districts the suit may be instituted either in the district in which the plaintiff or the defendant is a resident, and he must not only be a resident but also a citizen. *Ex parte Wisner,* 203 U. S. 444, 51 L. ed. 269, 27 Sup. Ct. 150. The especial ground upon which Harding based his motion in the Circuit Court was that at the time of the commencement of the suit in the state court he was not a resident of the district, and that none of the corporate defendants were such